

M/L 97
06.11.2024
Court. No. 5
suwayan

CO 88o of 2024

**Anukul Malik & Ors.
Vs.
Basudeb Santra & Ors.**

*Mr. Avirup Mondal
Mr. Soumalya Ganguli*

...for the Petitioners.

1. The present revisional application has been filed challenging the order No. 61 dated 4th December, 2023 whereby the learned Civil Judge (Junior Division), Additional Court, Serampore, Hooghly in T.S. No. 442 of 2018 was pleased to accept the report filed by the Survey Commissioner.
2. The learned Advocate appearing in support of the aforesaid revisional application would submit that although the report filed by the Survey Commissioner is dated 30th April, 2020, the Survey Commissioner has in fact in his examination-in-chief admitted that he had carried out survey work in the suit property on 28th December, 2020. By relying on the examination of the learned Survey Commissioner held on 2nd August, 2022, he would submit that the Survey Commissioner did not carrying out any inspection at the locale in the presence of the defendants/petitioners.
3. It is also submitted that no appropriate measurement work had been carried out and this aspect was completely overlooked by the learned Judge while accepting the Commissioner's report. It is still further

submitted that there has no proper demarcation of the property by the Commissioner.

4. Heard the learned Advocate appearing on behalf of the petitioner and perused the order dated 4th December, 2023. Upon going through the aforesaid order and the materials on record it would appear that the defendants at the time of hearing before the learned trial court had emphasized the fact that the date of the commission work which is mentioned in the report as 28th December, 2020 was improbable as the report filed by the Commissioner is dated 30th April, 2020. Accordingly, a case was attempted to be made out that no commission work had in fact taken place, as no report could have been filed prior to holding any commission.
5. It was also emphasized on behalf of the defendants that the name of the person who had helped the Commissioner for taking the measurement had not been indicated and that there was no endorsement on the defendants' side or their advocate to demonstrate that the defendants were present at the time of commission work. It would, however, appear that this aspect was duly considered by the learned Trial Judge. In his order, the learned Trial Judge had categorically recorded that from the perusal of the order sheet it would clearly appear, vide order No. 25 dated 30th April, 2021 that the learned survey passed commissioner had submitted his report on 30th April, 2021.

6. Having regard thereto, the learned Court held that it can well be presumed that due to some *bona fide* inadvertence in his report, the learned survey passed commissioner had mentioned the date as 30th April, 2020 instead of 30th April, 2021. The learned Judge further went on to record that the learned Advocate on behalf of the defendants at the time of conducting cross-examination had not put any further question seeking any clarification from the survey passed commissioner regarding the apparent mistake of the dates. Having regard thereto the learned Judge concluded that it was only a mere typographical error which could not interfere with the importance of the Commissioner's report. The learned Judge further concluded that the survey work was carried out after serving notice on both the sides and that the Commissioner had stated that the commission work was carried out in presence of both the sides. It would further transpire from the above order that according to the learned Commissioner he did not find any permanent pillar, structure in the locale or in the R.S. mouza map situated near to the suit plot and as such, he had selected the R.S. Plot Nos. 588 and 523 as fixed points after testing the same according to the scientific survey rules and procedures.
7. From a perusal of the aforesaid order it would be apparently clear that the survey work had been conducted in terms of the points laid down in the petition by applying all scientific survey rules and

procedures of survey work and there is no specific ambiguity found in the report.

8. The Court having further found that there was no sufficient grounds for rejection of the Commissioner's report had accepted the same.
9. The learned advocate representing the petitioners has failed to identify any material based on which the above finding can be said to be perverse. The factual findings thus cannot be interfered with. There appears to be no material irregularity far less any illegality in the order.
10. Having regard there to, I am not inclined to interfere with the order dated 4th December, 2023. No case for interference has been made out.
11. Accordingly, the revisional application being CO 880 of 2024 is rejected.
12. There shall be no order as to costs.

(Raja Basu Chowdhury, J.)